

CITY OF MILWAUKIE
CITY COUNCIL MEETING
AUGUST 17, 1993

The one thousand six hundred and seventy-seventh meeting of the Milwaukie City Council was called to order by Mayor Lomnicki at 7:03 p.m. in the Milwaukie Center with the following Councilmembers present:

Craig Lomnicki,
Mayor
Rick Farley

Jean Schreiber
Rob Kappa
Bob Knudson

Also present:

Dan Bartlett,
City Manager
Charlene Richards,
Assistant to the
City Manager
Bill Monahan,
City Attorney
Maggie Collins,
Community Development

Chuck Mansfield,
Police Chief
Tim Corbett,
Public Works Director
Paul Roeger,
Civil Engineer
Pat DuVal,
Recorder/Secretary

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Presentation of Police Explorer Post

Charles Mansfield, Police Chief, introduced members of the Police Explorer Post: Tony Cereghino, Justin Heath, Tony Killinger, John Hartner, and Jeff Dalrymple. Explorers, who are between the ages of 16-21, attend training sessions and perform a variety of task for the department as part of their scouting requirements.

Mansfield discussed the annual event in which the Milwaukie Police Explorers compete with other posts throughout Oregon and Washington. This year the Milwaukie Explorers received very high marks and brought home a physical agility team trophy.

Councilmember Knudson asked how many Explorers there were in the Milwaukie Post. Mansfield said there were seven members in the Milwaukie Post. He discussed the selection process and the orientation program.

Councilmember Knudson asked how many members usually continue in law enforcement. Mansfield said some of them participate in the reserve program.

Councilmember Kappa asked if there was a minimum age to participate in the program. Mansfield said the minimum age was 16 and the maximum age was 21.

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Councilmember Kappa asked how the program was funded. Mansfield said each Explorer pays their own expenses.

Councilmember Schreiber asked what motivated young people to enter the program. Mansfield said the Explorers were interested in their community and in personal advancement provided through Police Department training.

Recognition of Friends of the Ledding Library Equipment Donation

Charlene Richards, Assistant to the City Manager, said the Friends of the Library recently donated a CD-ROM that would enable patrons to do quick and comprehensive data base inquiries. The workstation will provide access to *The Oregonian* and several hundred magazines.

Fran Whitehill, Friends of the Library, discussed the group's activities to help provide necessities to the Ledding Library. She said the City was fortunate to have a team of three capable senior librarians.

Mayor Lomnicki said he appreciated the Friends of the Library and the assets they helped provide to the City.

Manager's Quarterly Report - Milwaukie Downtown Association

Karen O'Dowd, Milwaukie Downtown Association Manager, discussed the group's major accomplishments. Key items were: facade program development; sidewalk repair program assistance; design assistance; landscape program funding; waterfront cleanup day; lending institution involvement; light rail planning with the City; parking program support; sign ordinance modification; and economic restructuring through business seminars.

O'Dowd said figures indicate that the total number of businesses in the economic improvement district fell from 184 to 180. She said this was due primarily due to Dark Horse Comics expansion. Employment, however, increased from 697 to 729. She said figures indicate that there has been success in making downtown an employment center.

O'Dowd discussed events which have included the plant sale, Share the Lights, Festival Daze, and the Halloween Bike Rodco. She discussed the results of the 1993 Festival Daze survey. She said MDDA is working to improve communication between the business community and the City.

Susan Olson, MDDA Promotions Chair, discussed the upcoming Share the Lights Festival, Umbrella Parade, "Bowling for Dollars" fundraiser, and Wagon Tales & Trails.

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O'Dowd said MDDA was looking at lunchtime events for downtown employees. MDDA would continue consulting with the City on light rail planning while accommodating the needs of downtown employees. The group will work with City staff to enhance the entrance to the City and to develop a discrete downtown design. MDDA plans to encourage a master picture of downtown by working with a broad-based group of individual from differing backgrounds such as downtown business owners, property owners, Planning Commissioners, City Councilors, and City staff. This master picture would include a transit center, bike lanes, vehicle and bike parking facilities, and improvements to McLoughlin Blvd. Any proposed changes would be reflected in the City Zoning Ordinance guidelines.

O'Dowd said other proposed projects included a downtown employee survey, business recruitment package, free advertising in the monthly newsletter, and mapping business "clusters" in the downtown area.

O'Dowd said the organization was hoping to broaden the membership. Individual and family memberships would be solicited. The MDDA Board composition will change, and Dan Bartlett will act in an ex officio capacity. She discussed the "WOW" factor in downtown Milwaukie.

Mayor Lomnicki said Council appreciated having a Manager's report that could be distributed to people indicating the goals that have been attained and those yet to be met.

Monroe Street Traffic Analysis Update

Paul Roeger, Civil Engineer, presented the staff report on the Monroe Street Traffic Network Analysis. The report included compatibility, levels, and appropriateness of truck traffic on Monroe. He announced that a public meeting would be held on August 18. The final report from Tom Lancaster, Traffic Engineering consultant, was available at the Ledding Library for public inspection. He said there would be a City Council work session on September 7, and a public hearing on September 21, regarding the issue.

Councilmember Kappa asked how much staff time and money has been put into the Monroe Street Traffic Study. Roeger estimated that about fifty staff hours had been invested in the study.

Councilmember Farley asked if Lancaster would be at the August 18 public meeting. Roeger said Lancaster would attend the meeting on August 18 and the work session on September 7.

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PUBLIC HEARING

Consider Amending Chapter 10.40 of City Code (Uninsured Vehicle Impounding) - Ordinance

Mayor Lomnicki called the public hearing to discuss the adoption of an ordinance regarding vehicle impounding to order at 8:52 p.m.

Mayor Lomnicki said the purpose of the hearing was to consider adopting an ordinance that amends Chapter 10.40 of the City Municipal Code to allow for the impoundment of vehicles driven by uninsured operators. He reviewed the conduct of the hearing.

Staff Report: Charles Mansfield, Police Chief, presented the staff report in which the City Council was requested to consider an ordinance that would allow impoundment of vehicles where the operator has no valid drivers licences and is driving uninsured. This action was a result of Council direction to prepare an ordinance in the case where a driver was uninsured. He discussed the model ordinances from the Cities of Gresham and Portland.

Mansfield said if the ordinance was adopted, there would be a thirty-day period in which motorists would be notified of the ordinance and given information on procuring insurance. During the first six months of enforcement, the Police Department would pay for towing costs if the driver of an impounded vehicle was able to provide proof of insurance within 72 hours. The reimbursement program applies only once to each household. Following the six-month period, the enforcement law would be outright, and tow reimbursement would no longer apply.

Councilmember Knudson asked if insurance was a statewide requirement when a vehicle was registered. Mansfield said there has to be proof of insurance, and the Department of Motor Vehicles (DMV) does a spot check. There are some drivers who get insurance at registration time and then immediately cancel. In other cases people use "junkie" vehicles that are of such little value that the owners let them be towed and never attempt to get them back.

Mansfield discussed SB 998 that provided for the towing of uninsured vehicles. This legislation does not include the valid drivers license section.

Mansfield said there would be plenty of notice to the public during the first six months of the program.

Correspondence: None.

Testimony: None

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Staff Comments: None.

Questions of Clarification: Councilmember Kappa asked how this ordinance complimented the state legislation. Mansfield said impoundment would occur only when a driver had neither a valid license or proof of insurance.

Councilmember Kappa asked Mansfield if he believed junk cars would be a major problem. Mansfield said he did not foresee this type of problem based on Milwaukie's demographics. He said he would provide Council with a six-month update.

Councilmember Farley asked if there would be a problem storing impounded vehicles. Mansfield said the towing operator currently had an adequate storage facility.

Councilmember Farley asked what would be done with repeat offenders. Mansfield said the operators are responsible for all impoundment fees incurred. The goal of the proposed ordinance is to take uninsured vehicles off the road.

Councilmember Schreiber asked if both conditions, driving uninsured and not having a valid license, have to be met. Mansfield said a person can be cited for driving uninsured, but the vehicle will not be impounded if the operator has a valid drivers license. Councilmember Schreiber suggested that copies of the training bulletin be available at each City facility for the public.

Councilmember Kappa asked what is considered valid proof of having insurance. Mansfield said a valid proof of insurance must include both the policy number and the dates the policy is in effect.

Close Hearing: Mayor Lomnicki closed the public testimony portion of the hearing on the adoption of the vehicle impounding ordinance at 8:17 p.m.

Discussion among Councilmembers: It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to read the ordinance amending the Milwaukie Municipal Code Chapter 10.40 to allow the impoundment of vehicles driven by uninsured operators for the first time by title only. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The ordinance was read for the first time by title only.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to read the ordinance amending the Milwaukie Municipal Code Chapter 10.40 to allow the impoundment of vehicles driven by uninsured operators for the second time by title only. Motion passed 5 - 0 with the

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following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The ordinance was read for the second time by title only.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to adopt the ordinance amending the Milwaukie Municipal Code Chapter 10.40 to allow the impoundment of vehicles driven by Uninsured operators. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

ORDINANCE NO. 1745:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON,
AMENDING CHAPTER 10.40, IMPOUNDING VEHICLES.

AUDIENCE PARTICIPATION

Don Robertson, North Clackamas Parks and Recreation District, addressed Council on the issue of the proposed ordinance regulating alcoholic beverages in public places. He requested that time be allowed for the proposed ordinance to be reviewed by neighborhood boards and enforcement groups. He pointed out that permits have not been required for small quantities of alcohol. He was concerned that many people will come to the parks with containers less than a quart and be in violation of the City Code.

Mayor Lomnicki explained that Robertson was allowed to address Council on this issue during the Audience Participation section of the agenda because the public testimony portion of the hearing had been closed.

Councilmember Kappa asked Robertson if he considered enforcement the major problem. Robertson said the District was concerned with how the ordinance was to be enforced. What happens if a parks employee sees a picnicker drinking a glass of wine? Does the worker have to go over and talk to the person, or do they have to leave their job and call Police?

Councilmember Schreiber asked by what authority is the District going to grant alcohol permits to groups meeting in the City. Robertson said this was part of the intergovernmental agreement giving the Parks and Recreation Coordinator the authority to grant alcohol permits.

City Attorney Monahan said under the new ordinance, the Council would have to determine who is designated to grant alcohol permits.

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Councilmember Kappa said in a majority of cases, alcohol permits are granted to groups, not individuals. Robertson said the ordinance does not take into account a couple having a picnic in North Clackamas Park and drinking a glass of wine.

Councilmember Farley asked Robertson if the District was concerned that employees would have to do enforcement. Robertson said the concern was both for the employee who may have to enforce the ordinance and the customer using the facility.

Robertson said many of the users have already received the rules and know that alcohol is permitted. Adopting the ordinance at this time in the recreation season would make enforcement difficult.

Councilmember Kappa suggested that the district could contact those who have applied to use the park and tell them that an alcohol permit is now required. Robertson said those who are planning only a small picnic do not fill out applications.

Mayor Lomnicki asked if there was an alcohol permit fee. Robertson said now the fee is \$100. He said the District's biggest concerns were individuals who did not know about the regulation or those who have historically used the park and brought in small quantities of alcohol.

OTHER BUSINESS

Consider Regulation of Alcoholic Liquor - Ordinance, second reading

Dan Bartlett, City Manager, said at the first reading, Council directed staff to add an emergency clause. Council may choose to adopt either version.

It was moved by Councilmember Kappa and seconded by Councilmember Farley to read the ordinance regulating the use of alcoholic liquor in public places without the emergency clause for the second time by title only.

Mayor Lomnicki said he had real concerns about the ordinance, and there was no public testimony at the public hearing. He said he was concerned that there had not been enough notification, including the North Clackamas Parks and Recreation District. The ordinance states that the mere possession of an open container violates the code and is not tied to any improper action.

Councilmember Kappa said he finds people drinking from paper bags offensive.

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Mayor Lomnicki said this activity may be offensive but not really harmful. He suggested that there might be other ordinances in effect that could solve a public disturbance problem. He said he believed the proposed ordinance was too general. Should a citizen drinking a beer while washing his car be cited into Municipal Court for violating this ordinance? This ordinance is intended to crack down on those making us uncomfortable, but not really harming the public. He said he understands the enforcement of no alcohol on school grounds and public buildings.

Mayor Lomnicki urged that the ordinance not be adopted.

Councilmember Knudson said he believed that the exclusions to the ordinance should be drafted for Council review.

Councilmember Kappa said he did not believe the ordinance was meant to go after people who were minding their own business. He said the purpose of the ordinance was to address the issue of people drinking in public then getting into a car and causing an accident. He said he did not believe the ordinance would cause any problems.

Councilmember Schreiber said she believed allowing drinking in public places encouraged negative role models. Negative role models are subjective, and the ordinance should not be gerrymandered to get around this. Municipal buildings or schools grounds are not much different than the street. She said she did not believe the ordinance would be misinterpreted and become an administrative problem. She sought input from the Police Chief on implementation.

Councilmember Farley said he had gotten numerous calls from people who would not use the boat ramp because bottles and cans were strewn about. He said he had approached police officers about transients in the boat ramp area with bottles in their hands. The officers said they could not do anything about it. He said he was in favor of this ordinance because it enabled the Police Department to take action.

Mayor Lomnicki said laws existed regarding public disturbances. Ordinances should be linked to improper behavior. Laws are not put in place to create role models. He said he was concerned with the City can tell people what they own or have in their possession is unlawful.

Mayor Lomnicki responded to Councilmember Knudson's suggestion that exclusions be made for Council review. He said exclusions were extremely subjective and would be difficult for the Police Department to enforce.

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Councilmember Kappa said he did not believe this ordinance would create a problem a problem for people sitting in their front yards drinking a beer or enjoying a glass of wine. He said he did not believe neighbors would spy on each other.

Councilmember Schreiber discussed public and private behavior linked to alcohol consumption. She said she believed that allowing public drinking was close to a community that encouraged public violence of other kinds.

Councilmember Farley said a majority of cities in Oregon have open container laws. Mansfield said there are several communities in the area that have similar ordinances. Councilmember Farley said he has never seen anyone drinking a root beer from a paper bag.

Mayor Lomnicki said Council was discussing what was offensive to see, but does drinking from a paper bag warrant being stopped by the police. He said he was concerned about individual rights.

Councilmember Schreiber asked if the officer would have to have knowledge that the bag contained an alcoholic beverage. Mansfield said this type of stop would be based on probable cause.

Councilmember Kappa said there would have to be some kind of observable behavior in order for the officer to make a stop.

Mayor Lomnicki said it does not make any difference if its a can of coke or a can of beer; the person would have to exhibit some sort of behavior to be stopped. There is nothing that states that it is against the law to be drunk in public. The police can take action if there is disorderly behavior. Mansfield said there is a detoxification law.

Mayor Lomnicki said he believed only actions should be considered. Responsible drinkers should not be cited. There are laws to get those who are irresponsible off the street and in for help. He said he preferred that the ordinance was at least tabled until there was discussion with the Parks District and the Parks and Recreation Commission.

It was moved by Mayor Lomnicki to table the ordinance. The motion died for lack of a second.

Motion passed to read the ordinance for the second time by title only without the emergency clause 4 - 1 with the following vote: Councilmember Farley, Councilmember Schreiber, Councilmember Kappa and Councilmember Knudson aye; Mayor Lomnicki nay; no abstentions. The ordinance was read for the second time by title only.

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It was moved by Councilmember Kappa and seconded by Councilmember Farley to adopt the ordinance adding Chapter 9.06, alcohol regulations, to Title 9.

Mayor Lomnicki said he was concerned with selective enforcement because the ordinance was too general.

Councilmember Kappa said he believed many laws were selective. He said he believed this ordinance would help keep Milwaukie a good, safe place to live.

Councilmember Schreiber said it was necessary for society to monitor itself.

The motion to adopt the ordinance adding Chapter 9.06, alcohol regulations, to Title 9 passed 4 - 1 with the following vote: Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; Mayor Lomnicki nay; no abstentions.

ORDINANCE NO. 1746:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON,
AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADDING
CHAPTER 9.06, ALCOHOL REGULATIONS, TO TITLE 9, AND
DECLARING AN EMERGENCY.

Councilmember Schreiber said this much concern on the part of Council warrants an update by the Police Chief.

Councilmember Knudson suggested a report after one year. Councilmember Schreiber suggested three months.

It was moved by Councilmember Schreiber to direct the Police Chief to report the number of incidents related to this ordinance; the number of public contacts; and the number of citations issued after three months of implementation.

Mansfield suggested that statistics be compiled and presented with figures based on a December 31 cutoff with the report being available to Council at the first meeting in January.

Mayor Lomnicki said he was concerned that the ordinance be equally applied.

Councilmember Schreiber said a definite plan had to be worked out and the Parks District informed. Bartlett said staff would prepare a list of those designated to grant liquor permits.

Purchase Orders for Public Safety Building Furniture

It was moved by Councilmember Kappa and seconded by Councilmember Schreiber to waive the Council rules to consider purchase orders for furnishings for the Public Safety Building. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Dan Bartlett, City Manager, presented the staff report in which the City Council was requested to consider awarding purchase orders for furnishing for the Public Safety Building. He said Carl Moseley, Project Manager, had completed the bid opening on August 13. Two bids slightly exceeded the \$15,000 cap under which the City Manager could sign the purchase order without Council authorization. The third bid for tables and chairs also needed authorization. The budget for the move and the furniture was \$392,000.

Councilmember Schreiber asked if this was a mid-range line of office furniture. Bartlett said the furniture was a good, serviceable product.

Councilmember Farley requested a detail of the bids. Bartlett said he would make these available.

Councilmember Kappa asked when personnel would move. Bartlett said there is a transition team working on this aspect. The move in will probably take place about October 20. There is a task force working on move in procedures and developing a building treatment policy.

It was moved by Councilmember Knudson and seconded by Councilmember Farley to authorize the City Manager to sign purchase orders to: (1) Environetics, in the amount of \$15,318.25 for Herman Miller Action Office furniture selected from the State price agreement; (2) Environetics, in the amount of \$41,383.41, for chairs, tables, and ganged seating as low bidder; and (3) commercial furnishings, in the amount of \$15,143.58, for modular office furniture as low bidder. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

Commission Appointments

It was moved by Councilmember Kappa and seconded by Councilmember Schreiber to appoint David Tangvald and Ellicia DeCouteau to vacant positions on the Traffic Safety Commission. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember

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Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

INFORMATION

Councilmember Schreiber discussed MPAC'S upcoming recommendation to the Metro Council on the Greenspaces issue.

Mayor Lomnicki said informal discussions with District Councilors Gates and Wyers indicated that turn over of facilities would be a revenue neutral action. He said he was not convinced that this is actual. He said he did not believe Clackamas County should pay for another parks system.

Councilmember Schreiber discussed funding from contingency transfers and from the Metro general fund. An excise tax was proposed for facility users. She said she also had concerns that there was no plan for capital expenditures, such as the Expo Center being brought up to code. She said she would like to know from Metro staff what the long-term community impact would be and get an idea of a ten-year financial plan. She asked other City Councilors for suggestions.

Councilmember Kappa agreed that he was concerned with long-term funding of the project.

Councilmember Farley said he agreed with the funding concerns and asked if an excise tax was necessary.

Councilmember Schreiber discussed the Wilsonville Transfer Station. The design review approval for that property has a time limitation. Oregon City will not allow their transfer station to go beyond capacity after 1994.

Mayor Lomnicki said if the Wilsonville Transfer Station was a sound decision based on recycling statistics, then it should be accepted.

Councilmember Schreiber said MPAC is looking ahead to the next 50 years and the services needed for the influx of new residents. The Wilsonville site is near the freeway and would cut down on some hauling expenses.

CONSENT AGENDA

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to adopt the Consent Agenda which consisted of the City Council Minutes of August 3, 1993. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember

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Kappa, and Councilmember Knudson aye; no nays; no abstentions.

INFORMATION

None.

Mayor Lomnicki announced the City Council would meet in executive session immediately following adjournment of the regular session to discuss labor negotiations pursuant to ORS 192.660.

ADJOURNMENT

Mayor Lomnicki adjourned the meeting at 9:58 p.m.

Pat DuVal

Pat DuVal, Recorder/Secretary

EXECUTIVE SESSION

Potential Litigation

Charlene Richards, Assistant to the City Manager; Dan Bartlett, City Manager; Carl Moseley, PSB Project Manager; and Bill Monahan, City Attorney were present with Council.

Mayor Lomnicki called the group into executive session. Bartlett and Moseley reviewed a potential construction claim. Bartlett suggested he and Moseley have a settlement meeting with the other party, then report back to Council. The City Attorney Office would prepare a settlement agreement if necessary. Council asked to be kept informed of the status of this issue. Moseley left the session.

Labor Relations

Bartlett and Richards reviewed the status of negotiations with MPEA. They indicated that a settlement might be achieved if the City were willing to change some language. Richards proposed sending the union agent a settlement package. If accepted this could keep the parties from arbitration. Bartlett suggested that this be brought back to a future meeting after the union had an opportunity to respond.

Mayor Lomnicki adjourned the executive session at 10:40 p.m.

Dan R. Bartlett
Dan R. Bartlett, City Manager

